

1 JOSEPH S. LEVENTHAL (SBN 221043)  
joseph.leventhal@dinsmore.com  
2 ANDREW B. BARRAS (SBN 237550)  
andrew.barras@dinsmore.com  
3 **DINSMORE & SHOHL LLP**  
655 West Broadway, Suite 840  
4 San Diego, CA 92101  
(619) 356-3518 (telephone)  
5 (619) 615-2082 (facsimile)

6 Jonathan A. Muenkel (SBN 298198)  
jonathan@torreypineslaw.com  
7 **TORREY PINES LAW GROUP, P.C.**  
12636 High Bluff Drive, Suite 400  
8 San Diego, California 92130  
(858) 800-2537 (telephone)  
9 (858) 800-2537 (facsimile)  
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11 Attorneys for Plaintiff  
12 APMETRIX, INC.

13 UNITED STATES DISTRICT COURT  
14 SOUTHERN DISTRICT OF CALIFORNIA  
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16  
17 APMETRIX, INC., a Delaware Corporation,

18 Plaintiff,

19 vs.

20 ENSIGHTEN, INC., a Delaware Corporation,

21 Defendant.  
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Case No. **'16CV2498 CAB BGS**

**COMPLAINT FOR  
COPYRIGHT INFRINGEMENT**

**DEMAND FOR JURY TRIAL**

1 Plaintiff, Apmetrix, Incorporated (“Apmetrix” or “Plaintiff”) for its Complaint against  
2 Defendant Ensignten, Incorporated (“Ensignten” or “Defendant”) alleges and states as follows:

3 **NATURE OF ACTION**

4 1. This is an action for copyright infringement arising under the copyright laws of  
5 the United States, 17 U.S.C. §101 *et seq.* (the “Copyright Act”). Plaintiff seeks damages,  
6 attorneys’ fees, costs, pre-judgment and post-judgment interest, and injunctive relief.  
7

8 **THE PARTIES**

9 2. Plaintiff, Apmetrix, is a corporation organized and existing under the laws of the  
10 State of Delaware, with its principal place of business at 6450 Lusk Boulevard, Suite E208,  
11 San Diego, California 92121.

12 3. Upon information and belief, Defendant, Ensignten, is a corporation organized  
13 and existing under the laws of the State of Delaware, with its principal place of business at  
14 1741 Technology Drive, Suite 500, San Jose, California 95110.  
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16 **JURISDICTION & VENUE**

17 4. This Court has original and exclusive jurisdiction over the subject matter of this  
18 case pursuant to 28 U.S.C. §§ 1331 and 1338(a).

19 5. This Court has personal jurisdiction over Defendant since, *inter alia*, Defendant  
20 resides in California, has its principal place of business in California and transacts business  
21 within this District and the State of California.  
22

23 6. Venue is proper in this judicial district under 28 U.S.C. §§ 1391(b) and 1400(a)  
24 since (a) Defendant does business in the Southern District of California, and/or (b) a substantial  
25 part of the events giving rise to Apmetrix’s claims occurred in the Southern District of  
26 California.  
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## **FACTUAL BACKGROUND**

7. Plaintiff, Apmetrix, is an enterprise data management company that develops, markets, distributes and licenses a data analytics and management software platform to entertainment and media companies around the world. Apmetrix's proprietary Software-as-a-Service ("SaaS") platform allows its users to collect, review and analyze in real-time large amounts of data generated from various computing devices (e.g., desktops, laptops, gaming and mobile devices).

8. Upon information and belief Defendant, Ensighten, is a global omni-channel data and tag management technology vendor headquartered in San Jose, California. Defendant sells an enterprise tag management system (i.e., tools for managing and auditing JavaScript tags on websites, mobile applications and all devices) and marketing solutions that help marketers provide better customer experiences across consumer digital touchpoints.

9. In September 2014, Apmetrix created stand-alone software ("Utility Code") that would allow the user to extract old data from one software platform and transfer it to another software platform. The top of the first page of the Utility Code contains a copyright notice indicating ownership by Apmetrix.

10. Apmetrix holds a valid copyright in the Utility Code, and that was duly and properly registered with the United States Copyright Office. A true and correct copy of the Copyright Registration Certificate for the Utility Code, bearing number TXu002008654, is attached hereto as EXHIBIT A, and is incorporated by reference.

11. On or about September 21, 2014, Apmetrix provided a copy of the Utility Code to Anametrix, Inc., a company whose assets (including the Utility Code) were acquired by Defendant in October 2014.

1           12.     On May 31, 2016, Apmetrix put Defendant on notice as to Defendant's  
2     unpermitted use of Apmetrix's exclusive code and software, including Apmetrix's copyright  
3     protected Utility Code.

4           13.     Upon information and belief, Defendant has used and/or copied, and continues to  
5     use and/or copy, Apmetrix's Utility Code without authorization or any license, and in willful  
6     violation of Apmetrix's copyright.

7  
8                                 **COUNT I**  
9                                 **Copyright Infringement Under 17 U.S.C. § 101 et. seq.**

10           14.     Apmetrix re-alleges and incorporates by reference each of the allegations set forth  
11     in paragraphs 1 through 13 above.

12           15.     The Utility Code created by Apmetrix is wholly original and constitutes  
13     copyrightable subject matter under the Copyright Act.

14           16.     Apmetrix is the sole owner of the copyrighted Utility Code software, which is  
15     registered with the United States Copyright Office, bearing Registration Number TXu002008654.

16           17.     Defendant has infringed, and continues to infringe, Apmetrix's copyright in the  
17     Utility Code by, at least, using and copying the Utility Code in the U.S. without approval or  
18     authorization from Apmetrix.

19           18.     Defendant's acts of copyright infringement are willful, intentional and purposeful,  
20     in disregard of, and with indifference to, Apmetrix's intellectual property rights.

21           19.     As a direct and proximate result of said infringement by Defendant, Apmetrix has  
22     suffered damages and is entitled to recover damages, which may include any and all profits  
23     Defendant has made as a result of their wrongful conduct, actual damages incurred by Apmetrix,  
24     or statutory damages under the Copyright Act.  
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20. Plaintiff is further entitled to attorney's fees and full costs pursuant to the Copyright Act, and otherwise according to the law.

21. As a direct and proximate result of the foregoing acts and conduct, Apmetrix has sustained and will continue to sustain substantial, immediate and irreparable injury, for which there is no adequate remedy of law. Apmetrix is informed and believes and therein alleges that, unless enjoined and restrained by the Court, Defendant will continue to infringe upon Apmetrix's rights in the copyrighted software. Apmetrix is therefore entitled to a preliminary and permanent injunction to restrain and enjoin Defendant's continuing infringing conduct.

### PRAYER FOR RELIEF

WHEREFORE, Apmetrix respectfully prays that the Court grant the following relief:

A. Judgment that Defendant has infringed Apmetrix's rights in its federally registered copyright, in violation of the Copyright Act;

B. Judgment that Defendant's above-mentioned infringement is/was willful;

C. An accounting of, and the imposition of a constructive trust with respect to Defendant's profits attributable to their infringement of Apmetrix's copyright;

D. An award of damages equal to Apmetrix's actual damages and Defendant's profits pursuant to the Copyright Act or, alternatively, enhanced statutory damages pursuant to the Copyright Act;

E. An award of prejudgment interest from the date infringement began;

F. An aware of attorneys' fees and costs pursuant to the Copyright Act;

G. A preliminary and permanent injunction prohibiting Defendant, its respective officers, agents, servants, employees and/or all persons acting in concert or participation with them, from engaging in further infringement of Apmetrix's copyright; and

H. For all other and further relief deemed just and proper by the Court.

**DEMAND FOR JURY TRIAL**

Plaintiff hereby demands a trial by jury on all claims.

Dated: October 5, 2016

**DINSMORE & SHOHL LLP**

By: /s/ Joseph S. Leventhal  
JOSEPH S. LEVENTHAL (SBN 221043)  
ANDREW B. BARRAS (SBN 237550)

**TORREY PINES LAW GROUP, P.C.**

By: /s/ Jonathan A. Muenkel  
JONATHAN A. MUENKEL (SBN 298198)

Attorneys for Plaintiff, Apmetrix, Inc.